



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CRIMINAL APPLICATION CASE NO. 1 OF 2019

LESITT, J

ROBERT NJUGUNA MUTHEE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant has **ROBERT NJUGUNA MUTHEE** approached this court with an application dated 10th April 2019 seeking leave to file an appeal out of time. That application was granted in Misc. Criminal Application No. 89/2019 by Hon. Ngenye, J.

2. The Applicant next filed a Misc. Criminal Application No. 1/2019 under certificate of urgency. In that file is a Chamber Summons application without any date. It sets out six prayers as follows:

(i) That the learned magistrate erred in law and facts when she imposed the sentence in this case yet failed to consider my mitigating factors as presented before her.

(ii) That the sentence imposed upon me the appellant is rather too harsh and excessive and not commensurate to the offence charged.

(iii) That the learned trial magistrate erred in law and facts by failing to put my health status in spite of medical documents availed in this regards.

(iv) That the learned trial magistrate erred in both law and facts when she declined to appreciate my recommendation letter from the correctional facility I am currently held.

(v) That the learned trial magistrate erred in both law and facts by failing to consider the period spent in custody pursuant to article 333(2) of the Criminal Procedure Code.

(vi) That I pray for a review of the sentence imposed.

3. The Applicant filed written submissions dated 12th October 2020. In his oral submissions he said that he is seeking Review of Re-Sentencing Order made by Chief Magistrate's Court Kibera in Criminal Case No. 8224 of 2003.

4. I have perused the record and I see that he was tried, convicted and sentenced to death in 2005 by Chief Magistrate's Court Kibera. After the **Muruatetu** decision of the Supreme Court in **Petition No. 14 and 15 of 2016**, the Applicant filed an application for Re-Sentencing before this court in Misc. Criminal Application No. 292 of 2018. This court sent his application for Re-Sentencing back to the trial court by an order dated 30th August 2018.

5. The application for Re-Sentencing was heard inside the original criminal case File no. 8224 of 2003 by Hon. Mutuku on 8th March 2019. On the 19th March 2019, Hon. Mutuku made a Re-sentence Order in the following terms:

“Re-Sentence

I have considered the mitigation by the accused together with the authorities presented in court on 15th February 2019. I have also perused the pre-sentencing report herein dated 15th March 2019 and the evidence on record.

I have also taken into account the period served by the accused as well as the circumstances of the offence herein and re-sentence the accused to life in imprisonment.

Right of appeal 14 days.

Dated and delivered this 19th day of March 2019.

Hon. Mutuku.”

6. The Applicant now seeks orders of review of Re-sentence that was delivered by Hon. Mutuku on 19th March 2019. I have considered his submissions which are on record.

7. Ms. Kibathi for the ODPP did not oppose the application. It was Learned Counsel’s submissions that this court has jurisdiction to entertain the Revision Application under **section 362** of the **Criminal Procedure Code**. Counsel urged that the basis of her submissions was the fact the sentence meted out by the Application was harsh and excessive considering the judgment of Muruatetu & Another vs. Republic [2017] eKLR.

8. Counsel urged that though the Applicant was armed with a pistol and robbed the victim of a vehicle and valuables worth 607,000/= no violence was meted out and no life was lost. Further the Probation Officer’s Report recommended that Applicant be given a second chance which the court ignored.

9. The Judgment of Muruatetu Case, supra ordered for “**Paragraph [112]b). This matter is hereby remitted to the High Court for re-hearing on sentence only, on priority basis, and inconformity with this judgement.**”

10. At **paragraph [110]** the Supreme Court in Muruatetu case, supra, stated:

“Remitting the matter back to the High Court for the appropriate sentence seems to be the practice adopted where the Mandatory death penalty has been declared unconstitutional. We therefore hold that the appropriate remedy for the petitioners in this case is to remit this matter to the High Court for sentencing.”

11. No where did the Supreme Court direct that after rehearing on sentence the convicted party would be at liberty to challenge such sentence by any means. I find that this application challenging the sentence imposed in compliance to the Supreme Court’s guiding judgment on re-hearing on sentence is incompetent.

12. Accordingly, the application is struck out in its entirety.

13. Those are my orders.

DATED, SIGNED AND DELIVERED THROUGH TEAMS THIS 30TH DAY OF NOVEMBER, 2020.

LESIT, J

JUDGE

In the presence of

Mr. Kinyua Court Assistant

Mr. Momanyi..... For the Respondent

Applicant in person present

LESIT, J

JUDGE